

IT 03-7

Tax Type: Income Tax

Issue: Non-Filers (Income Tax)

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
CHICAGO, ILLINOIS**

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THE DEPARTMENT OF REVENUE	)	
OF THE STATE OF ILLINOIS	)	No. 02-IT-0000
	)	
	)	SSN 000-00-0000
v.	)	
	)	Tax Year 1997
	)	
JOHN DOE,	)	
TAXPAYER	)	Kenneth Galvin
	)	Administrative Law Judge
	)	

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**RECOMMENDATION FOR DISPOSITION**

**Appearances:** Mr. Sean P. Cullinan and Mr. Todd A. Zoellick on behalf of the Department of Revenue of the State of Illinois; Mr. John Doe, *pro se*.

**Synopsis:**

On January 3, 2002, the Illinois Department of Revenue (hereinafter “the Department”) issued a Notice of Deficiency (hereinafter “NOD”) to John Doe (hereinafter “taxpayer”). The basis of the NOD was the Department’s determination that the taxpayer had failed to file an Illinois income tax return for tax year 1997. The NOD proposed the assessment of taxes, penalties and interest.

On March 1, 2002, taxpayer filed a timely protest of the NOD and requested a hearing, which was held on April 30, 2003. Following a review of the testimony and evidence presented at the hearing, it is recommended that the Department's NOD be finalized as issued.

**Findings of Fact:**

1. The Department's *prima facie* case, inclusive of all jurisdictional elements, is established by the NOD, which indicates that the taxpayer failed to file an Illinois income tax return for tax year 1997 and assesses a net tax due of \$628, a non-filing penalty of \$263, a penalty for underpayment of estimated tax of \$113, and interest to January 3, 2002, of \$301. Dept. Ex. No. 1.
2. Based upon information obtained from the Internal Revenue Service regarding the taxpayer's federal income tax, the Department determined the taxpayer's adjusted gross income to be \$21,932 in 1997. Dept. Ex. No. 1.

**Conclusions of Law:**

The Illinois Income Tax Act, 35 ILCS 5/101 *et seq.*, requires that a tax return be filed by the fifteenth day of April following the close of the taxable year. 35 ILCS 5/505(2). Section 601 provides that every taxpayer required to file a return shall pay any tax due to the Department on or before the date fixed for filing such return. 35 ILCS 5/601(a). If a taxpayer fails to file a tax return, the Department shall determine the amount of the tax due and this amount shall be "*prima facie* evidence of the correctness of the amount due." 35 ILCS 5/904(b). Additionally, Section 904(a) of the Illinois

Income Tax Act provides that a NOD is *prima facie* evidence of the correctness of the amount of tax and penalties due. 35 ILCS 5/904(a). The NOD issued in this case indicates that the taxpayer had an adjusted gross income of \$21,932 in 1997 and failed to file a tax return.

The Illinois Income Tax Act states that a “tax measured by net income is hereby imposed on every individual, corporation, trust and estate for each taxable year ending after July 31, 1969, on the privilege of earning or receiving income in or as a resident of this State.” 35 ILCS 5/201(a). Taxpayer argued that he did not request permission from Illinois for the privilege of earning revenue in the State in 1997 and that he did not exercise any privilege granted by the State in 1997. Black’s Law Dictionary, cited by the taxpayer, defines “privilege” as a “particular and peculiar benefit or advantage enjoyed by a person, company or class, beyond the common advantages of other citizens.” Tr. pp. 13-14. According to the taxpayer, the Illinois Income Tax Act does not identify any particular person or class of persons that the privilege tax applies to. Taxpayer’s Ex. No. 1. “Privilege taxes are not on the mass [es]. Black’s Law limits it.” Tr. p. 98. Mr. Doe testified that he never “received any kind of indication of what privilege [he] is being taxed on.” Tr. p. 59. “It doesn’t stipulate what the privilege is. Am I manufacturing cars? Am I distilling liquor? What is the privilege? We still have not identified the taxable privilege on record.” Tr. p. 85.

Although 35 ILCS 5/201(a) states that it is imposing a tax on the privilege of earning or receiving income, the tax is in fact “a state income tax for purposes of Section 164(a)(3) of the Internal Revenue Code and an income tax for purposes of Article IX, Section 3 of the Illinois Constitution of 1970.” Mr. Doe was advised of this in a letter

addressed to him dated February 24, 2003, from the Deputy General Counsel for the Department of Revenue. Dept. Ex. No. 2. The “privilege” mentioned in the statute is on earning or receiving income in this State. Mr. Doe testified that he did not earn income in Illinois in 1997. Tr. p. 58. No documentary evidence was admitted to support this contention. A taxpayer’s testimony alone will not overcome the Department’s *prima facie* case. Central Furniture Mart v. Johnson, 157 Ill. App. 3d 907 (1<sup>st</sup> Dist. 1987).

Mr. Doe would not admit that he was a resident of Illinois in 1997. “Was I a resident? I was a citizen. That’s a higher class.” Tr. p. 57. He testified that the company he worked for was located in Illinois in 1997 and that he was paid by the company that he worked for in Illinois in 1997. He also testified that he did not work outside the State in 1997 and he did not receive a paycheck for any work that he did outside the State in 1997. Tr. p. 58. The only conclusion to be drawn from this testimony is that Mr. Doe exercised the privilege of earning and receiving income in the State in 1997 and that he resided in this State in 1997.

The state’s power to tax its residents on personal income, from whatever source derived, is defined by the United States Supreme Court case, New York ex rel. Cohn v. Graves, 300 U.S. 308, 313 (1937), where the Court stated that “[A] tax measured by the net income of residents is an equitable method of distributing the burdens of government among those who are privileged to enjoy its benefits.” Authorization for an Illinois income tax is found in the Illinois Constitution which provides that “the General Assembly has the exclusive power to raise revenue by law except as limited or otherwise provided in this Constitution.” Ill. Const, Art. IX, Sec. 1. Section 3 of the Illinois Constitution provides for a “tax on or measured by income,” thereby creating the Illinois

Income Tax Act. Ill. Const. Art. IX, Sec. 3. Illinois income tax is imposed on all Illinois residents, defined as individuals “in this state for other than a temporary or transitory purpose during the taxable year...” 35 ILCS 5/201. The evidence and testimony shows that Mr. Doe earned and received income in Illinois in 1997 and that he resided in Illinois in 1997. As a resident, Mr. Doe was entitled to any services that the State provided. However, Mr. Doe and all other residents must contribute to the funding of those services, in part through the Illinois Income Tax Act.

Taxpayer has been assessed penalties for failure to file a tax return by the due date [35 ILCS 5/1001], and failure to make the required estimated tax payments [35 ILCS 5/804]. The penalties imposed under the above sections shall not apply if the taxpayer shows that the failure to file a return or make the estimated tax payments was due to reasonable cause [35 ILCS 735/3-8]. Taxpayer has failed to show any reasonable cause for penalty abatement and the penalties assessed for failure to file a timely income tax return and failure to pay estimated taxes should not be abated.

WHEREFORE, for the reasons stated above, it is my recommendation that the Notice of Deficiency dated January 3, 2002, should be finalized as issued.

Kenneth E. Galvin  
Administrative Law Judge

June 23, 2003